IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 603 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PREMJIBHAI DEVJIBHAI MEWADA

Versus

STATE OF GUJARAT AND OTHERS

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Appearance :
MR RAKESH B SHARMA for the Applicants.
Mr. N.D. Gohil, Additional Public Prosecutor for respondents.
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged order of externment dated 30.01.05 passed against him by the Deputy Commissioner of Police, North Division, Surat City, order passed by the appellate authority dated 07.03.06, order dated 04.08.05 detaining the petitioner in custody for the rest of the period n the ground that he has violated the externment order and order dated 04.08.05 by which the the petitioner was committed to Vadodara Special Jail.

By order of externment dated 30.01.05 passed by the Deputy Commissioner of Police, North Division, Surat City, the petitioner was externed for a period of two years from Surat City. The said order was challenged before the appellate authority and the appellate authority, by order dated 07.03.06 partly allowed the appeal and reduced the period of externment by six months. Therefore, as per the appellate order, the petitioner was required to be externed upto 31st July 2006. However, not being satisfied by the appellate order, the petitioner has preferred this petition.

Mr. Sharma, learned advocate for the petitioner submitted that before passing the order of externment, the petitioner was subjected to show cause notice under section 59 of the Bombay Police Act 1951 [hereinafter referred to as Act]. In the show cause notice, a copy of which is at page 12 Annexure 'A', there is a reference to three pending cases against the petitioner. The show cause notice was issued on the ground that in order to prevent the petitioner from continuing with the activities, the authorities propose to pass

an order for externment under section 56 (a) (b) of the Act. Ultimately, the authority, Deputy Commissioner of Police, North Division, Surat City passed an order on 30.01.05. In the said order, over and above the three cases referred to in the show cause notice, the authority has also considered two more cases registered against the petitioner at Mahidharpura Police Station.

Learned advocate for the petitioner further submitted that thereafter the petitioner was arrested and detained in custody on 4.8.2005 for the rest of the period on the ground that he has violated the externment order. The said order dated 4.8.05 by which the petitioner was detained in jail is annexed at Annexure 'F' to the petition. By a separate order passed on the same date, Annexure 'E', the petitioner was committed to Vadodara Special Jail.

Learned advocate for the petitioner has also challenged the said order of detention on the ground that the same is without jurisdiction as the petitioner could not have been kept in custody and detained upto the period of externment especially when even a compliant is also filed under section 142 of the Act.

So far as the order of externment is concerned, the show cause notice was issued earlier. In the show cause notice, there is a reference to only three FIRs which are alleged against the petitioner at Mahidharpura Police Station. However, at the time of passing the order of externment, the authority has taken into consideration two more cases, which is not in dispute.

Even though this point is taken in the petition, there is no reply from the State. The petitioner is accordingly denied opportunity to effectively reply to the show cause notice as these cases have admittedly not been mentioned in the show cause notice.

In the judgment in the case of **MEGHA NARANBHAI HARIJAN vs. STATE OF GUJARAT & ORS. reported in 2002 (4) GLR 3412**, a learned Single Judge of this court held that if any material is not disclosed in the show cause notice and if the same is based at the time of passing the externment order, it amounts to not giving an effective and reasonable opportunity for tendering explanation against the show cause notice and the real purpose and object of sec. 59(1) of the Act will be frustrated. The said observations are made in paragraph 14 of the judgment.

In the instant case, reference to the two cases mentioned in the externment order is not finding place in the show cause notice. Considering the aforesaid judgment of this Court as well as considering the fact that in the externment order extraneous material which are not mentioned in the show cause notice have been taken into consideration, the externment order is required to be quashed and set aside.

So far as detention of the externee under section 62 of the Act is concerned, reference is required to be made to the said section, which reads as under:-

> “62. Procedure on failure of person to leave the

area and his entry therein after removed:

(1). If a person to whom a direction has been issued under section 55, 56 or 57 to remove himself from an area -

(i). fails to remove himself as directed

or

(ii). having so removed himself, except with the permission in writing of the authority making the order as provided in sub-section (2) enters the area within the period specified in the order, the authority concerned may cause him to be arrested and removed in police custody to such place outside the area as the said authority may in each case prescribe.

(2). The authority making an order under section 55, 56 or 57 may in writing permit any person in respect of whom such order has been made to enter to return to the area, including any contiguous districts or part thereof, from which he was directed to remove himself, for such temporary period and subject to such conditions as may be specified in such permission and may require him to enter into a bound with or without surety for the due observance of the conditions imposed. The authority aforesaid may at any time revoke at any time such permission. Any person who with such permission enters or returns to such

> area shall observe the conditions imposed, and at the expire of the temporary period for which the permitted to enter or return, or on the earlier revocation of such permission, shall remove himself outside such area, or the area and any contiguous districts or part thereof, and shall not enter therein or return thereto within the unexpired residue of the period specified in the original order made under section 55, 56 or 57 without a fresh permission. If such person fails to observe and of the conditions imposed, or to remove himself accordingly, or having so removed himself enters or returns to the area, or the area and any continuous district or part thereof, without fresh permission,t he authority concerned may cause to be arrested and removed in police custody to such place outside the area as that authority may in each case prescribe".

It is required to be noted that separate criminal case is already filed for entering the area, and if found guilty the petitioner can be convicted. The externing authority, after removing the petitioner from the area in question, has kept him in Special Jail at Vadodara upto the period of externment. That part of the action is, on the face of it, illegal, as the petitioner could have been taken out from the area where he was not required to enter in view of the externment order and he could have been removed and taken out from the area through police. However, after taking him out from the area with the help of police, he cannot be kept in jail till the

externment period is over. It is to be kept in mind that for the act of entering into the area without permission, the petitioner has already been subjected to prosecution under section 142 of he Act. Section 142 of the Act reads as under:

> “142. Penalty for entering without permission area from which a person is directed to remove himself or overstaying when permitted to return temporarily:
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> Without prejudice to the power to arrest and remove a person in the circumstances and in the manner provided in section 62, any person who-
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> (a). in contravention of a direction issued to him under section 56, 57 or 63AA enters or returns without permission to the area, or any district or districts or part thereof, from which he was directed to remove himself;
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> (b). enters or returns to any such area or district aforesaid or part thereof with permission granted under sub-section (2) of Section 62, but fails, contrary to the provisions thereof, to remove himself outside such area at the expiry of the temporary period for which he was permitted to enter or return or on the earlier revocation of such permission, or having removed himself at the expiry of such temporary period or on revocation of the permission, enters or returns thereafter without fresh permission;

> shall, on conviction, be punished with imprisonment for a term which may extend to two years, but shall not, except for reasons to be recorded in writing, be less than six months, and shall also be liable to fine."

Since the authority has already resorted to section 142 by filing complaint, detention of the petitioner is clearly in violation of the provisions of the Act. The petitioner was taken out from the area with the police help. He could, therefore, not have been kept in detention in the Special Jail. Otherwise that will amount to keeping in jail without trial. The said order, therefore, deserves to be quashed and set aside, and is accordingly set aside.

A learned Single Judge has taken a similar view in the case of **R.P. THAKORE vs. STATE OF GUJARAT reported in 2000 (3) GLH 280**. The learned Single Judge has taken a similar view that for the breach of externment order, the externee is required to be dealt with in accordance with law under section 142 of the Act. Therefore, in the aforesaid case, the order by which the externee was kept in jail for two years was found to be an order of punishment without adjudication. The said order was, therefore, set aside by the learned Single Judge of this Court.

In the result, this petition is allowed. The order of externment dated 30.01.05 passed by DCP, North Zone, Surat City and the order dated 7th March 2006 passed by the Joint Secretary are quashed and set aside.

The order of detention dated 4.8.05 as well as order dated 4.8.05 committing the petitioner to Special Jail, Baroda, both passed by In-charge DCP, North Division Surat City, Surat are also quashed and set and set aside. The petitioner is ordered to be released and set at liberty forthwith unless he is required in connection with any other offence.

Rule made absolute accordingly.

[P. B. MAJMUDAR, J.]

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